

SENATE BILL 3375

By Jackson

AN ACT to amend Tennessee Code Annotated, Title 7, Chapter 52 and Title 65, Chapter 25, relative to expanding municipal and electric cooperative authority to provide broadband services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated Section 65-25-202, is amended by deleting subdivision (13) and by substituting instead the following:

(13) "Telecommunications," except as otherwise provided in §§ 65-25-231 and 65-25-234, means all broadband and internet services, cable services, two-way transmission of video, audio or written content, video programming or any other service for the transmission of intelligence. "Telecommunications" does not include pager, telegraph or telephone services, or any other like services subject to regulation by the Tennessee Regulatory Authority pursuant to chapters 4 or 5 of this title. It is the legislative intent that telecommunications services and telecommunications joint ventures, as provided for within this part, are distinct from and not within the range of services governed by chapters 4 or 5 of this part; and

(14) "Telecommunications joint venture" means a joint venture or other business relationship with one (1) or more third parties to provide telecommunications services.

SECTION 2. Tennessee Code Annotated Section 65-25-205(c), is amended by deleting the subsection in its entirety and by substituting instead the following:

(c)

(1) In addition to the powers set forth herein and elsewhere, a cooperative has the power and is authorized to acquire, construct, own, improve, operate, lease, maintain, sell, mortgage, pledge or otherwise dispose of any system, plant, or equipment for the provision of telecommunications services as defined

by § 65-25-202 and to provide such services within the service area of the cooperative.

(2) A cooperative may exercise the authority provided by subdivision (c)(1) independently or through a telecommunications joint venture. Additionally, a cooperative has the power and is authorized to acquire, construct, own, improve, operate, lease, maintain, sell, mortgage, pledge or otherwise dispose of any system, plant, or equipment for the provision of telecommunications services as defined by § 65-25-202 and to provide such services outside the service area of the cooperative, with the consent of or through a telecommunications joint venture in conjunction with any other electric or telephone cooperative or municipal electric system in whose territory the cooperative will provide such services.

(3) Nothing in this section shall eliminate or modify the obligation of a cooperative to obtain any franchise otherwise required by § 7-59-102 or subsequent or alternative franchise obligation. A telecommunications joint venture established under the authority of this section shall comply in all respects with § 65-25-230.

SECTION 3. Tennessee Code Annotated, Section 65-25-227, is amended by deleting the section in its entirety and by substituting instead the following:

(a) A cooperative providing telecommunications services, as provided by § 65-25-205(c)(1), may not provide subsidies for such services.

(b) Notwithstanding the limitation set forth in subsection (a), an electric cooperative may:

(1) Dedicate a reasonable portion of the electric plant to the provision of telecommunications service, the costs of which shall be allocated to such services for regulatory purposes;

(2) Lend funds, at a rate of interest not less than the highest rate then earned by the electric cooperative on invested electric plant funds, to acquire, construct, and provide working capital for the system, plant, and equipment necessary to provide any such services; provided that such interest costs shall be allocated to the cost of such service for regulatory purposes, and another provided further that no financing for such purposes shall come from loans from the rural utility service of the United States department of agriculture unless and until such loans are specifically authorized by federal statute.

(c) To the extent that an electric cooperative offers the services authorized by § 65-25-205, such cooperative shall have all the powers, obligations, and authority granted other entities providing such services under the applicable laws of the United States, the state of Tennessee, or local governments; provided that the franchise under which such services are provided shall not be considered an overlapping franchise nor in any way modify or amend § 7-59-203.

(d) Nothing in this part shall be construed to alter or amend the process or procedure for renewal of franchises.

(e) It is unlawful in connection with the provision of telecommunications services for a cooperative or the local franchising authority, as referenced in title 7, chapter 59, to use unfair or anti-competitive practices under any applicable provision of state or federal law. Such practices shall include, but are not limited to, predatory pricing, collusion, and price tying.

(f) The cooperative or the local franchising authority, as referenced in title 7, chapter 59, may bring a civil action for injunctive or declaratory relief in chancery court to enforce the provisions of subsection (c). Venue for such action may be in any county where the unfair or anti-competitive practice is alleged to have occurred or to be threatened.

SECTION 4. Tennessee Code Annotated Section 65-25-230, is amended by replacing the language "cable joint venture" wherever it appears and by substituting instead the language "telecommunications joint venture".

SECTION 5. Tennessee Code Annotated Section 65-25-231, is amended by inserting the following language as subsection (a) and by re-designating the existing subsections accordingly:

(a) Notwithstanding any provision of § 65-25-202 to the contrary, for purposes of this section, "telecommunications" is defined consistent with the use of that term in chapters 4 and 5 of this title, and includes only such telephone, telegraph and like services that are subject to regulation by the Tennessee Regulatory Authority in accordance with those chapters.

SECTION 6. Tennessee Code Annotated Section 65-25-234, is amended by inserting the following language as subsection (a) and by re-designating the existing subsections accordingly:

(a) Notwithstanding any provision of § 65-25-202 to the contrary, for purposes of this section, "telecommunications" is defined consistent with the use of that term in chapters 4 and 5 of this title, and includes only such telephone, telegraph and like services that are subject to regulation by the Tennessee Regulatory Authority in accordance with those chapters.

SECTION 7. Tennessee Code Annotated, Section 7-52-103(c), is amended by deleting the subsection in its entirety and by substituting instead the following:

(c) In addition to the authority granted under otherwise applicable law, each municipality operating an electric plant has the power and is authorized on behalf of its municipality, acting through the authorization of the board of supervisory body having responsibility for the municipal electric plant, to establish a joint venture or other business relationship with one (1) or more third parties to provide the services authorized by § 7-52-601. Any such joint venture or other business relationship shall be subject to § 7-52-601(a)(2) and § 7-52-602 - 7-52-609.

SECTION 8. Tennessee Code Annotated, Section 7-52-601(a), is amended by deleting the subsection the subsection in its entirety and by substituting instead the following:

(a)

(1) Each municipality operating an electric plant described in § 7-52-401 has the power and is authorized, under this part and on behalf of its municipality acting through the authorization of the board or supervisory body having responsibility for the municipal electric plant, sometimes referred to as "governing board" in this part, to acquire, construct, own, improve, operate, lease, maintain sell, mortgage, pledge or otherwise dispose of any system, plant, or equipment for the provision of cable service, two-way video transmission, video programming, internet services, or any other like system, plant, or equipment within or without the corporate or county limits of such municipality. A municipality may only provide cable service, two-way video transmission, video programming, internet services or other like service through its board or supervisory body having responsibility for the municipality's electric plant. A municipality providing any of the services authorized by this section may not

dispose of all or substantially all of the system, plant, and equipment used to provide such services, except upon compliance with the procedures set forth in § 7-52-132.

(2) Before a municipality provides services pursuant to this subsection (a) in an area outside the service area of the municipality's electric system, the municipal electric system shall obtain the consent of each electric cooperative or other municipal electric system in whose territory the municipal electric system will provide such services, and the municipal electric system shall obtain such franchises as are required pursuant to § 7-59-102(i). Nothing in this subsection (a) shall eliminate or modify the obligation of municipal electric systems to obtain such franchises within its service area as are required pursuant to § 7-59-102(i).

SECTION 9. The authorization provided in Section 7 and Section 8 of this act supplements the authorization granted to municipal electric systems operation pursuant to § 7-52-601 on the effective date of this act, and the authorization granted to municipal electric systems having received approval pursuant to § 7-52-602 as of the effective date of this act.

SECTION 10. This act shall take effect upon becoming a law, the public welfare requiring it.